LABOUR DEPARTMENT

The 4th May, 1987.

No. 9/2/87-6 Lab./2303.—In pursuance of the provision of section 17 of the Industriial Disputes Act, 1947 (Control Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. (1) Transport Commissioner, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 13 of 1986

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF MIS. (i) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH, (ii) GENERAL MANAGER, HARYANA ROADWAYS, ROHTAK.

Shri M. C. Bhardwaj, A. R., for the workman.

Shri S. C. Singla, A. R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Om Parkash and the management of M/s. (i) Transport Commissioner, Haryana, Chandigarh, (ii) General Manager, Haryana Roadways, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 3983-89, dated 27th January, 1986:—

Whether the termination of services of Shri Om Parkash is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was appointed as a Conductor in the respondent/ Roadways at Rohtak, on 10th July, 1974, but his services were terminated all of a sudden on 3rd July, 1975, which amounted to retrenchment as defined in section 2(oo) of the Industrial Disputes Act, 1947 and since no retrenchment compensation was paid to him under section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), his termination was illegal and unlawful as the petitoiner had put in more than 240 days of actual work with the respondent. So, he has claimed reinstatement with continuity of service and full back wages.

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad for misjoinder of parties, because the State Transport Controller, Haryana, Chandigarh, is not a necessary party and that the reference is bad on account of delay and laches and further the same has not been made in legal and proper way. On merits, it is alleged that since the services of the petitioner were no longer required after 30th July, 1975, his termination was in accordance with the terms and conditions of the appointment letter, because the petitioner was appointed against suspension vacancy with regular breaks and so, provisions of section 2(oo) of the said Act are not attracted.

4. On the pleadings of the parties, the following issues were settled down for decision by me on 21st April, 1986 —

(1) Whether the reference is bad on account of delay and laches and on account of preliminary objection No. 3 of the Written Statement? OPR.

(2) As per terms of reference.

5. In support of his case, the petitioner appeared as WW-1 and the respondent examined MW-1 Shri Rajinder Singh, Clerk, Labour Commissioner, Haryana, Chandigarh, MW-2 Shri Krishan Lal, Clerk, Haryana Roadways, Rohtak.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

Issue No. 1 :

7. This issue clinches the controversy in this case. The objection taken by the respondent has two facets. It was argued that the reference, is bad on account of delay and laches because petitioner's services were terminated on 30th July, 1975 and he raised the demand notice for the first time on 10th August, 1978, after a

lapse of more than three years. In this very vein, it was contended that the appropriate Government slept over the matter for seven long years, be for deciding to refer the dispute to this Court for adjudication. The reference order is dated 27th January, 1986, which was registered in the Court on 3rd February, 1986. In that behalf it may be observed that the powers of the Government in making the reference are absolutely untrammelled since no limitation is prescribed in that behalf. On this ground the reference cannot be thrown out. It was also held by the Supreme Court in *Avon Services Production Agencies case* 1979 *Lab. I.C.I.* Though the objection taken has not been detailed but during the course of arguments it was contended that the appropriate Government did not choose to bear the respondent before making the reference or while rejecting the claim of the petitioner many a times earlier. This fact is bore out from the statement of Shri Rajinder Singh, Clerk, office of the Labour Commissioner, Haryana, Chandigarh. He stated that the demand notice of the petitioner dated 10th August, 1978, was rejected by the Government on 3rd March, 1979. Appeal filed by the petitioner was rejected on 26th November, 1979. Second appeal was filled by him on 11th May, 1981 and the same was rejected on 23rd July, 1981. Another appeal was filed by him on 3rd February, 1982. It was ordered that notice be given to the parties. The respondent did not appear. The same was rejected on 21st April, 1982. Again another appeal was filed by the petitioner on 4th September, 1983, which was rejected on 20th September, 1983. The petitioner again moved an application/appeal with the Labour Minister, Government of Haryana, who called for a report from the Labour Commissioner's office which was sent on 2nd July, 1985. Thereafter probably under the orders of the Labour Minister, dated 3rd September, 1985, the dispute was ordered to be referred to the Labour Court for adjudication. This witness further stated that before passing this order no opportunity of hearing was given to the respondent though, comments of the respondent were called along with the copy of the appeal,—*vide* letter dated 4th November, 1985 and the comments of the respondent were received on 25th December, 1985.

8. The facts and dates given above have not been disputed by the parties. Because the same have been derived from the reference file of the petitioner, which has been retained in the Court. The learned authorised representative of the respondent Shri Singla contended that calling for the comments upon the appeal of the petitioner after a decision has been taken by the Government for referring the dispute to the Labour Court for adjudication was an empty formality and that this does not satisfy the ratio of the law laid down in 1983 *Vol.* 16 *Lab. I.C.* 223 *between M/s Escorts Ltd., Faridabad* versus *Industrial Tribunal, Haryana, Faridabad.* It is a full bench authority of the Hon'ble High Court of Punjab and Haryana, which was rendered by the then Chief Justice S. S. Sandhawalia, on behalf of the full bench. In paragraph number 7 of the judgement his Lordship observed and I quote in verbatim:—

> "Lastly in this context it seems difficult to hold that reviewing and recalling the earlier order rejecting a reference in favour of the employer would not entail grave penal and civil consequences to him. It is true that the earlier rejection does not give any vested right to the employer to have the issue finally closed and no consideration of resjudicata can possibly arise in this situation. Nevertheless in view of adverse consequences that they may well ensue by referring a dispute which has been earlier rejected, the employer would be entitled to be heard before it is re-opened . . .
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> "it was argued and we believe rightly that the whole gamut of the industrial relation betwixt the employer and the workers would remain in a continuous flux if despite an earlier rejection for a reference of an industrial dispute it can be re-opened with impunity either independently or at the behest of the workman without any notice and entirely behind the back of the employer."

9. In the concluding paragraph number 10 on this aspect of the controversy, their Lordships observed, which can be quoted with advantage:—

> "In the light of the aforesaid discussion the answer to the question posed at the outset is rendered in the affirmative and it is held that the rule of audi alteram partem is attracted to the exercise of power a second time

under S. 10(1) of the Act whilst referring the matter for adjudication after the same had been rejected earlier. Applying the above the finding of the Tribunal of issue 3 is patently illegal and is hereby quashed".

10. So, there is no scope for discussion or dissent that no reference can be made by the Government to the Labour Court while reviewing or re-calling its earlier order of rejection without giving an opportunity of hearing to the management. In the present case applying the ratio of the authority referred to above, it can be held that simply because comments of the respondent were called after a decision had been taken by the Government, the reference in the present case, was bad in law, because calling for the comments after a decision had been taken was absolutely uncalled for. So, this issue goes against the petitioner.

Issue No. 2 :

11. Since issue No. 1 has gone against the petitioner, I need not discuss or dispose of this issue.

12. In the light of my foregoing discussion, it is held that the present reference is bad in law and is answered and returned accordingly with no orders as to cost.

Dated the 4th March, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Rohtak.

Endorsement No. 13-86/575, dated the 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Hissar.

No. 9/2/87-6 Lab./2304.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Haryana Dairy Development Co-operative Federation Ltd., Milk Plant Road, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 114 of 1986.

between

SHRI HARKESH, WORKMAN AND THE MANAGEMENT OF M/S. HARYANA DAIRY DEVELOPMENT CO-OPERATIVE FEDERATION LTD., MILK PLANT ROAD, ROHTAK

Shri S. N. Vats, A.R., for the workman.

Shri K. L. Nagpal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workmen Sarvshri Harkesh, Shamsher Singh, Satpal Singh, Om Parkash and Gajraj Singh and the management of M/s. Haryana Dairy Development Co-operative Federation Ltd., Milk Plant Road, Rohtak, to this Court, for adjudication,—*vide* Haryana Government Gazette, Notification No. 30229, dated 21st August, 1986, 30249, 30256, 30263, 30-2-70, dated 21st August, 1986 :— August, 1986:—

Whether the termination of services of Sarvshri Harkesh, Shamsher Singh, Satpal Singh, Om Parkash and Gajraj Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of references, they were registered at serial number 114, 116, 117, 118 and 119 all of the year 1986. These references were ordered to be consolidated,—*vide* my order dated 19th February, 1987, since common question of law and facts were involved.

3. There are five petitioners. Their date of appointment and termination as mentioned in the claim Statements are as under:—

Name	Date of appointment	Date of termination
Shri Harkesh	3-9-77	13-7-81
Shri Sat Pal Singh	12-8-78	13-7-81
Shri Shamsher Singh	9-8-78	13-7-81
Shri Om Parkash	Not given	13-7-81
Shri Gajraj	24-9-77	13-7-81

4. *Inter alia,* it may be mentioned at this stage that the dated of termination have been challenged by the respondent in the reply filed. It is alleged that the date of discharge of Shri Harkesh and Shri Shamsher Singh is 4th July, 1981, and that of Shri Satpal Singh is 3rd July, 1981. The common claim of the petitioners is that they were appointed with the respondent on the date mentioned above and that the respondent chose to terminate their services unlawfully with effect from 13th July, 1981, in flagrant disregard of the provisions of the Industrial Disputes Act, 1947.

5. The common refrain of the replies filed in all these references is that the retrenchment was legal and lawful and since the petitioners had not worked for 240 days during the last 12 calendar months preceding the date of discharge, and so provisions of section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) are not attracted in this case. Further the respondent has given the number of days each workman had put in during the last 12 calendar months, which, I shall discuss at the appropriate stage. It is also mentioned in the reply that the number of days actually worked by each workman has been calculated after excluding Sundays and National Holidays and the strike period from 18th October, 1980 to 23rd December, 1980 and 9th January, 1981 to 18th January, 1981. Additional plea projected is that since the petitioner did not invoke the conciliation machinery provided under section 12 of the Industrial Disputes Act, 1947, nor did they take resort to arbitration proceedings under section 10-A of the said Act. So, the strike period mentioned above has to be excluded from the number of actual days worked by each workman. Another plea taken is that the petitioners have remained gainfully employed after their termination.

6. In the rejoinder filed by the petitioners, they have controverted the various pleas taken by the respondent.

7. On the pleadings of the parties, the following issues were settled for decision by me on 16th October, 1986:—

(1) Whether the strike resorted to by the workman was illegal and improper? If so, to what effect? DPR.

(2) Whether the workman had remained gainfully employed after his termination? OPR.

(3) As per terms of reference.

8. All the petitioners appeared in support of their claim and the respondent examined MW-1 Shri R. P. Chiller, its Assistant and MW-2 Shri Raj Singh, Time-keeper.

9. Learned authorised representatives of the parties heard.

10. Since issues No. 1 and 3 defy separate discussion, so, they have been taken up together for disposal. Issue No. 1 is regarding legality or illegality of the strike resorted to by the workforce of the respondent from 18th October, 1980 to 23rd December, 1980 and 9th January, 1981 to 18th January, 1981. Decision of this aspect of the controversy is immaterial because, even if the days of strike period are excluded from the calculation, all the petitioners had completed 240 days of actual work with the respondent during the last 12 calendar months preceding the date of termination. The respondent has placed on record for the perusal of the Court Ex. M-3 to M-7 which are statements prepared by the respondent showing the number of actual days worked by each workman during the last 12 calendar months preceding the date of termination. This calculation has been made by the respondent after excluding the days of strike period and Sundays and National Holidays. If Sundays and National Holidays are added, each workman has admittedly worked for more than 240 days to entitle them to the benefits of section 25-F of the said Act. Now, the question would be as to whether Sundays and National Holidays are to be included or not while calculating the days actually worked by a workman, the said controversy stands clinched in view of the dictum laid down in 1985 *S. C. Cases (L and S)* 940 *Workmen of American Express International Banking Corporation* versus *Management of American Express International Banking Corporation.* In this authority their Lordships of the Hon'ble Supreme Court of India observed and which I quote in extenso:—

'The expression 'actually worked under the employer' in section 25-B(2)(a)(ii) must necessarily comprehend all these days during which the workman was in the employment of the employer and for which he had been

paid wages either under express or implied contract or service or by compulsion of statute, standing orders etc. To give any other meaning to that expression would bring the object of Section 25-F very close to frustration. It is not possible to limit that expression only to those days which are mentioned in the explanation to Section 25-B(2) for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expense of the main provision.

The question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in Lalappa Lingappa case and therefore, the decision in that case is not applicable to the present question."

11. Another authority on the point, which can also be referred with advantage is 1985 *Lab. I. C.* 1733 *H. D. Singh* versus *Reserve Bank of India and others.* In the authority under reference, the petitioner H. D. Singh filed an affidavit that he has worked for 202 days from July, 1975 to July, 1976. The Hon'ble Supreme Court *suo moto* choose to add 52 Sundays and 17 National Holidays to raise the number of days actually worked by the petitioner to 271. So, viewed from any angle, in the present case, the petitioners are deemed to have actually worked with the respondent the number of working days as under:—

Shri Gaj Raj Singh	...	300 days.
Shri Harkesh	...	295 days.
Shri Om Parkash	...	301 days.
Shri Shamsher Singh	...	298 days.
Shri Sat Pal	...	293 days.

12. Once it is held, which fact is not disputed by respondent also that all the petitioners had actually worked for more than 240 days with the respondent during the last 12 calendar months preceding the date of termination, even after excluding days of strike period, there is no denying the fact that the provisions of section 25-F, which are mandatory in nature, would come into full play. As per the own showing of the respondent, no prior notice or retrenchment compensation was paid/given to any of the petitioner before ordering their discharge or terminating their services. So, termination/discharge of the petitioners were violative of the mandatory provisions of section 25-F of the said Act and as such, termination orders were illegal and unlawful and void *ab initio* and so the same are set aside. So, issue Number 1 need not be gone into and issue number 3 goes in favour of the petitioner. The question of relief, I shall take up at the fagend.

ISSUE No. 2:

13. On behalf of the respondent, taking a cue from the admission of the petitioners that they have been engaging themselves in odd activities like daily wager, Richshaw pulling, helping their elders in agriculture, it was forcefully contended by Shri Nagpal leadned Authorised Representative of the management that the petitioners have remained gainfully employed after their termination and as such, they are not entitled to full back wages. The contention of Shri Nagpal is grotesque on the face of it. A poor and helpless workman thrown out of employment all of a sudden cannot be allowed himself and his family to be starved to death and not engage himself in odds and errands to keep the wolf away from the doors. Such earnings, if any, made by the petitioners during the period of their forced employment can be ignored as soletium. So, this issue goes against the respondent.

14. And now, the relief;

There is no date mentioned on the demand notices received along with the order of reference in the case of four petitioners except Harkesh, upon whose demand notice the date mentioned is 24th January, 1986. All the five demand notices tally in their wording. Not only that they seem to be the carbon copy of the demand notice received along with the order of references of Shri Shamsher Singh, petitioner. So, it can be well presumed that all the demand notices are dated 24th January, 1986. Order of termination was passed at best in the beginning of July, 1981, and the latest in the middle of the said month. So, there is an un-explained delay of 3½ years. What forum the petitioner choose

to get their illegal termination set aside, is not on record. The functioning of the respondent is so slovenly that it has been in the red from the very beginning. The Industrial Disputes Act, 1947, is a Central enactment and the management of the respondent plant was supposed to know its provisions. Even then, it choose to pass patently illegal order of termination. In case of reinstatement under this Act a workman has to be paid wages for no work done. If the principles of accountability is introduced in the public sector undertaking and the officials at the helm of the affairs are held accountable for the illegal acts, they shall feel some responsibility in future before passing such illegal orders, by these illegal orders of termination not only petitioners have been forced remain to idle and suffered mental and physical agony, they will have to be paid wages by a concern which has been hardly earning any profit and has a burden on the state exchequer. There can be no straight jacket formula in awarding back wages. The managemet must be made to pay full back wages, in case, it can afford it. In the present case about six years back wages would be onerous burden upon the management. Under these circumstances, taking into consideration not very flattering financial position of the respondent/plant and the fact that the petitioners have been slumbering over their rights for more than 3½ years, 50 per cent of their back wages from the date of termination till 24th January, 1986 would be most fair and equitable. So, I order as under:—

Half back wages from 13th July, 1981 to 23rd January, 1986.

Full back wages from 24th January, 1986 till the date of reinstatement.

15. So, all the five petitioners are ordered to be reinstated with continuity of service and back wages as indicated above and all consequential benefits of the intervening period. The references are answered and returned accordingly with no order as to cost. A copy of this award be placed upon the file of reference number 116 to 119 all of the year 1986.

Dated the 6th March, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

Endorsement No. 114-86/574, dated the 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Sonepat.

No. 9/2/87-6Lab./2305.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Metachem Industries, Khewra Road, Bahalgarh (Sonepat)

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 162 of 84

between

SHRI RAKESH KUMAR SHARMA, WORKMAN AND THE MANAGEMENT OF M/S. METACHEM INDUSTRIES, KHEWRA ROAD, BAHALGARH (SONEPAT).

Present :

Shri S. N. Solanki A.R., for the workman.

Shri D. C. Gandni, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Rakesh Kumar Sharma and the management of M/s. Metachem Industries, Khewra Road, Bahalgarh (Sonepat), to this Court, for adjudication,—**vide** Haryana Government Gazette Notification No. 33523—28, dated 3rd September, 1984 :—

Whether the termination of services of Shri Rakesh Kumar Sharma is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a worker since February, 1982 on monthly wages of Rs. 521 and that since he was member of the Working Committee of the Chemical Workers Union operating in the respondent concern, the management was piqued against the petitioner for union activities and as such, his services were terminated on 3rd July, 1984 without assigning any reason and in flagrant disregard of the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law as services of the petitioner were never retrenched as alleged whose name still exists on the roll of the respondent. Another plea taken is that leaving his employment of his own the petitioner has remained gainfully employed. On merits, it is alleged that the petitioner was employed on 1st December, 1982 and was being paid a sum of Rs. 461 as wages and Rs. 60 as house rent allowance. It is further alleged that the petitioner stopped attending to his duties of his own after 2nd July, 1984. It is further alleged that the respondent is not aware of that the petitioner was a active unionist and that in spite of many notices given the petitioner did not resume his duties.

4. On the pleadings of the parties, the following issues were settled for decision by me on 5th March, 1985 :—

(1) Whether the reference is bad in law ? OPM.

(2) As per terms of reference. OPA.

(3) Whether the workman remained gainfully employed after alleged dismissal ? OPM.

5. The petitioner appeared as his own witness as WW-1 and the respondent examined Shri Ved Parkash MW-1 its Time Keeper, MW-2 Shri Ramesh Chander, Postman, Noida, District Gaziabad, Uttar Pradesh.

6. Learned authorised representatives of the parties heard.

ISSUES NO. 1 AND 2 :

7. These issues being a kin in nature have been clubbed together for decision. The case of the petitioner is that the respondent terminated his services unlawfully with effect from 3rd July, 1984 since he was a union activist, vociferously voicing the grievances of other workmen employed in the respondent. During the course of proceedings in the reference efforts were made by this Court to settle the dispute amicably. In pursuance of the same, the workman agreed to resume his duties on 7th May, 1985 in the shift commencing from 4-00 p.m. to 12-00 p.m. The management blamed the workman for not resuming his duties on the said date. So, another effort was made to settle the dispute on 24th July, 1985 and the workman agreed to resume his duties with effect from 25th July, 1985. Somehow or the other these efforts of the Court proved abortive. The parties blame each other for the failure of the same. The management has placed on record notices Exhibit MX/1, MX/2, MX sent to the petitioner asking him to resume his duties. The petitioner half heartedly denied the receipt of the same. In pursuance of the settlement arrived at in the Court on 7th May, 1985 the workman went to resume his duties but lodged a protest on 13th May, 1985 that the management is not sincere in implementing the settlement as he was made to stand in the sun throughout the day in front of the office complex and was not assigned any duties. It is difficult to swallow this stand taken by the petitioner, because no management would like to pay wages to a workman by keeping him un-employed. The only inference possible is that the petitioner is not interested in doing his job and his only interest seems to be to keep the controversy alive and be paid wages, in case of reinstatement, for no work done. Such an attitude is subversive of industrial discipline and this Court cannot countenance, a situation where the workforce wants to get paid without doing any work. So, inference is obvious that the petitioner abandoned his employment of his own and that the management failed to persuade the petitioner to resume his duties in spite of numerous notices. So, there was no termination of services of the petitioner on 3rd July, 1984 as alleged, because the management kept his name on the rolls copy of which are Exhibit MX/7 to MX/29. Under these circumstances, there is no escape from the conclusion that there was no termination of services of the petitioner and as such, he is not entitled to any relief. So, issue No. 1 is answered in favour of the management and issue number 2 against the workman.

ISSUE NO 3 :

8. The petitioner denied that he was employed with M/s. International Dyes and Chemical, Sector-8, Noida. An efforts was made by the respondent to summon a clerk from the said concern but these efforts proved abortive. So,

in the absence of any evidence, it is difficult to hold that the petitioner has remained gainfully employed after his termination.

9. In the light of my fore-going discussion, this reference fails. The petitioner is not entitled to any relief. The reference is answered and returned accordingly with no order as to cost.

The 9th March, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

Endorsement No. 162-84/573, dated 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak,
Camp Court, Bhiwani.

Dated 24th March, 1987.

No. 9/2/87-6 Lab./2306.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonepat :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 216 of 1985.

between

SHRI KAMOD, WORKMAN AND THE MANAGEMENT OF M/S. SHANKAR TEXTILE MILLS, 41/4, BAHALGARH ROAD, SONEPAT.

Shri Bahadur Yadav, A. R. for the workman.

Shri S. S. Aggarwal, A. R. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Kamod and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonepat, to this Court, for adjudication,—**vide** Haryana Government Gazette Notification No. 49601—06, dated 6th December, 1985 :—

Whether the termination of services of Shri Kamod, s/o Shri Mool Chand, is justified and in order ? If not, to what relief is he entitled ?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Weaver since 1st September, 1982 on monthly wages of Rs. 470 and that the respondent concern was closed on 2nd November, 1984 without any prior notice to the workforce or without setdling the dues of the workers and was re-opened on 18th December, 1984 without giving any prior notice and even then, when the petitioner approached the respondent to allow him to resume his duties, he was not allowed to do so and that in that behalf, a complaint was lodged with the respondent on 4th January, 1985. So, it is alleged that the respondent terminated his services in flagrant dis-regard of the provisions of the Industrial Disputes Act, 1947, (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objections taken are that since the petitioner of his own started absenting from his duties, he is deemed to have abandoned his employment and that the Claim Statement has not been signed by the petitioner or presented by him before the Court and Shri Bahadur Yadav had no authority to do so and that the respondent concern has since been closed from 31st December, 1984 and as such, claim for re-instatement is not tenable. On merits, it is alleged that the petitioner was employed as a temporary weaver but it is denied that he was drawing wages of Rs. 470 p.m. Remaining reply runs on the same lines and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were framed on 29th May, 1986:—

(1) Whether the reference is bad in law ?

OPR.

(2) As per terms of reference.

5. In support of his claim the petitioner appeared as WW-1 and examined WW-2 Shri G. S. Thakur, Labour Inspector, Sonepat. The management examined MW-1 Shri Chander Bhan and MW-2 Shri Chiranji Lal, Time Keeper.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

ISSUE NO. 2 :

7. In the reply filed in the Court, the stand taken by the respondent is that the petitioner abandoned his employment of his own. It is not mentioned as to from which date the petitioner started remaining absent from his duties. In the Court the respondent took a complete somersault when Chander Bhan MW-1 stated that the respondent concern was closed in the month of January, 1985 (in the reply it is alleged that the same was closed on 31st December, 1984) and that the same was closed on account of financial stringencies. There is not a whisper in the statement of Shri Chander Bhan that the petitioner abandoned his employment of his own. So, the only inference possible is that the allegations made by the petitioner are correct. Even if it be believed that the respondent concern was closed in the month of December, 1984 or January, 1985 the said closure was illegal under section 25(o) sub-clause (6), because no application for permission for closure of the concern was ever made by the respondent, and if any made, no evidence has been adduced in the Court to prove the same. In such a situation, the closure of the concern was illegal and the petitioner shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. So, the petitioner is ordered to be reinstated with continuity of service and full back wages.

ISSUE NO. 1 :

8. Since the petitioner was not allowed to resume his duties after the concern opened on 18th December, 1984, there is no question of the reference being bad in law.

9. In the light of my foregoing discussion, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

The 14th March, 1987.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 216—85/572, dated the 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947..

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

No. 9/2/87-6Lab./2307.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonepat :—

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 215 of 85.

between

SHRI BABU LAL, WORKMAN AND THE MANAGEMENT OF M/S. SHANKAR TEXTILE MILLS, 41/4, BAHALGARH ROAD, SONEPAT.

Shri Bahadur Yadav, A.R., for the workman.
Shri S. S. Aggarwal, A.R., for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Babu Lal and the management of M/s. Shankar Textile Mills, 41/4, Bahalgarh Road, Sonepat, to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 49614-19, dated 6th December, 1985:—

> Whether the termination of services of Shri Babu Lal s/o Shri Dukkhi is justified and in order? If not, to what relief is he entitled?

2. On receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he

was employed with the respondent as a Weaver since 1st September, 1982 on monthly wages of Rs. 470 and that the respondent concern was closed on 2nd November, 1984 without any prior notice to the workforce or without settling the dues of the workers and was re-opened on 18th December, 1984 without giving any prior notice and even then when the petitioner approached the respondent to allow him to resume his duties, he was not allowed to do so and that in that behalf, a complaint was lodged with the respondent on 4th January, 1985. So, it is alleged that the respondent terminated his services in flagrant disregard of the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act).

3. In the reply filed by the respondent, preliminary objections taken are that since the petitioner of his own started absenting from his duties, he is deemed to have abandoned his employment and that the Claim Statement has not been signed by the petitioner or presented by him before the Court and Shri Bahadur Yadav had no authority to do so and that the respondent concern has since been closed from 31st December, 1984 and as such, claim for reinstatement is not tenable. On merits, it is alleged that the petitioner was employed as a temporary Weaver but it is denied that he was drawing wages of Rs. 470 per mensem. Remaining reply runs on the same lines and as such, I need not suffer repetition.

4. On the pleadings of the parties, the following issues were framed on 29th May, 1986:—

(1) Whether the reference is bad in law, OPR.

(2) As per terms of reference.

5. In support of his claim the petitioner appeared as WW-1 and examined WW-2 Shri G. S. Thakur, Labour Inspector, Sonepat. The management examined MW-1 Shri Chander Bhan and MW-2 Shri Chiranji Lal, Time Keeper.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below:—

Issue No. 2:

7. In the reply filed in the Court, the stand taken by the respondent is that the petitioner abandoned his employment of his own. It is not mentioned as to from which date the petitioner started remaining absent from his duties. In the Court the respondent took a complete somersault when Chander Bhan MW-1 stated that the respondent concern was closed in the month of January, 1985 (in the reply it is alleged that the same was closed on 31st December, 1984) and that the same was closed on account of financial stringencies. There is not a whisper in the statement of Shri Chander Bhan that the petitioner abandoned his employment of his own. So, the only inference possible is that the allegations made by the petitioner are correct. Even if, it be believed that the respondent concern was closed in the month of December, 1984 or January, 1985 the said closure was illegal under section 25(o) sub-clause (6), because no application for permission for closure of the concern was ever made by the respondent, and if any made, no evidence has been adduced in the Court to prove the same. In such a situation, the closure of the concern was illegal and the petitioner shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down. So, the petitioner is ordered to be reinstated with continuity of service and full back wages.

Issue No. 1:

8. Since the petitioner was not allowed to resume his duties after the concern opened on 18th December, 1984, there is no question of the reference being bad in law.

9. In the light of my foregoing discussion, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated 14th March, 1987

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.

Endorsement No. 215-55/571 dated 24th March, 1987.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,
Presiding Officer,
Labour Court, Rohtak.